

CLIENT-LAWYER RELATIONSHIP

Search Rules

RULE 1.15 SAFEKEEPING PROPERTY

This rule has four subparts: Rule 1.15-1, Definitions; Rule 1.15-2, General Rules; Rule 1.15-3, Records and Accountings; and Rule 1.15-4, **Trust** Account Management in Multiple-Lawyer Firm. The subparts set forth the requirements for preserving client property, including the requirements for preserving client property in a lawyer's **trust** account. The comment for all four subparts as well as the annotations appear after the text for Rule 1.15-4.

CLIENT-LAWYER RELATIONSHIP

Search Rules

RULE 1.15-1 DEFINITIONS

For purposes of this Rule 1.15, the following definitions apply:

- (a) "Bank" denotes a bank savings and loan association, or credit union chartered under North Carolina or federal law.
- (b) "Client" denotes a person, firm, or other entity for whom a lawyer performs, or is engaged to perform, any legal services.
- (c) "Dedicated trust account" denotes a trust account that is maintained for the sole benefit of a single client or with respect to a single transaction or series of integrated transactions.
- (d) "Demand deposit" denotes any account from which deposited funds can be withdrawn at any time without notice to the depository institution.
- (e) "Entrusted property" denotes trust funds, fiduciary funds and other property belonging to someone other than the lawyer which is in the lawyer's possession or control in connection with the performance of legal services or professional fiduciary services.
- (f) "Fiduciary account" denotes an account, designated as such, maintained by a lawyer solely for the deposit of fiduciary funds or other entrusted property of a particular person or entity.
- (g) "Fiduciary funds" denotes funds belonging to someone other than the lawyer that are received by or placed under the control of the lawyer in connection with the performance of professional fiduciary services.
- (h) "Funds" denotes any form of money, including cash, payment instruments such as checks, money orders, or sales drafts, and receipts from electronic fund transfers.
- (i) "General trust account" denotes any trust account other than a dedicated trust account.
- (j) "Item" denotes any means or method by which funds are credited to or debited from an account; for example: a check, substitute check, remotely created check, draft, withdrawal order, automated clearinghouse (ACH) or electronic transfer, electronic or wire funds transfer, electronic image of an item and/or information in electronic form describing an item, or instructions given in person or by telephone, mail, or computer.
- (k) "Legal services" denotes services (other than professional fiduciary services) rendered by a lawyer in a client-lawyer relationship.
- (l) "Professional fiduciary services" denotes compensated services (other than legal services) rendered by a lawyer as a trustee, guardian, personal representative of an estate, attorney-in-fact, or escrow agent, or in any other fiduciary role customary to the practice of law.
- (m) "Trust account" denotes an account, designated as such, maintained by a lawyer for the deposit of trust funds.
- (n) "Trust funds" denotes funds belonging to someone other than the lawyer that are received by or placed under the control of the lawyer in connection with the performance of legal services.

History Note: Statutory Authority G.S. 84-23

Adopted July 24, 1997

Amended May 4, 2000; March 1, 2003; March 6, 2008, October 8, 2009; August 23, 2012; June 9, 2016

CLIENT-LAWYER RELATIONSHIP

Search Rules

RULE 1.15-2 GENERAL RULES

- (a) **Entrusted Property.** All entrusted property shall be identified, held, and maintained separate from the property of the lawyer, and shall be deposited, disbursed, and distributed only in accordance with this Rule 1.15.
- (b) **Deposit of Trust Funds.** All trust funds received by or placed under the control of a lawyer shall be promptly deposited in either a general trust account or a dedicated trust account of the lawyer. Trust funds placed in a general account are those which, in the lawyer's good faith judgment, are nominal or short-term. General trust accounts are to be administered in accordance with the Rules of Professional Conduct and the provisions of 27 NCAC Chapter 1, Subchapter D, Sections .1300.
- (c) **Deposit of Fiduciary Funds.** All fiduciary funds received by or placed under the control of a lawyer shall be promptly deposited in a fiduciary account or a general trust account of the lawyer.
- (d) **Safekeeping of Other Entrusted Property.** A lawyer may also hold entrusted property other than fiduciary funds (such as securities) in a fiduciary account. All entrusted property received by a lawyer that is not deposited in a trust account or fiduciary account (such as a stock certificate) shall be promptly identified, labeled as property of the person or entity for whom it is to be held, and placed in a safe deposit box or other suitable place of safekeeping. The lawyer shall disclose the location of the property to the client or other person for whom it is held. Any safe deposit box or other place of safekeeping shall be located in this state, unless the lawyer has been otherwise authorized in writing by the client or other person for whom it is held.
- (e) **Location of Accounts.** All trust accounts shall be maintained at a bank in North Carolina or a bank with branch offices in North Carolina except that, with the written consent of the client, a dedicated trust account may be maintained at a bank that does not have offices in North Carolina or at a financial institution other than a bank in or outside of North Carolina. A lawyer may maintain a fiduciary account at any bank or other financial institution in or outside of North Carolina selected by the lawyer in the exercise of the lawyer's fiduciary responsibility.
- (f) **Funds in Accounts.** A trust or fiduciary account may only hold entrusted property. Third party funds that are not received by or placed under the control of the lawyer in connection with the performance of legal services or professional fiduciary services may not be deposited or maintained in a trust or fiduciary account. Additionally, no funds belonging to a lawyer shall be deposited or maintained in a trust account or fiduciary account of the lawyer except:
- (1) funds sufficient to open or maintain an account, pay any bank service charges, or pay any tax levied on the account; or
 - (2) funds belonging in part to a client or other third party and in part currently or conditionally to the lawyer.
- (g) **Mixed Funds Deposited Intact.** When funds belonging to the lawyer are received in combination with funds belonging to the client or other persons, all of the funds shall be deposited intact. The amounts currently or conditionally belonging to the lawyer shall be identified on the deposit slip or other record. After the deposit has been finally credited to the account, the lawyer shall withdraw the amounts to which the lawyer is or becomes entitled. If the lawyer's entitlement is disputed, the disputed amounts shall remain in the trust account or fiduciary account until the dispute is resolved.
- (h) **Items Payable to Lawyer.** Any item drawn on a trust account or fiduciary account for the payment of the lawyer's fees or expenses shall be made payable to the lawyer and shall indicate on the item by client name, file number, or other identifying information the client from whose balance the item is drawn. Any item that does not include this information may not be used to withdraw funds from a trust account or a fiduciary account for payment of the lawyer's fees or expenses.
- (i) **No Bearer Items.** No item shall be drawn on a trust account or fiduciary account made payable to cash or bearer and no cash shall be withdrawn from a trust account or fiduciary account by any means.
- (j) **Debit Cards Prohibited.** Use of a debit card to withdraw funds from a general or dedicated trust account or a fiduciary account is prohibited.
- (k) **No Benefit to Lawyer or Third Party.** A lawyer shall not use or pledge any entrusted property to obtain credit or other personal benefit for the lawyer or any person other than the legal or beneficial owner of that property.

(l) Bank Directive. Every lawyer maintaining a trust account or fiduciary account with demand deposit at a bank or other financial institution shall file with the bank or other financial institution a written directive requiring the bank or other institution to report to the executive director of the North Carolina State Bar when an instrument drawn on the account is presented for payment against insufficient funds. No trust account or fiduciary account shall be maintained in a bank or other financial institution that does not agree to make such reports.

(m) Notification of Receipt. A lawyer shall promptly notify his or her client of the receipt of any entrusted property belonging in whole or in part to the client.

(n) Delivery of Client Property. A lawyer shall promptly pay or deliver to the client, or to third persons as directed by the client, any entrusted property belonging to the client and to which the client is currently entitled.

(o) Property Received as Security. Any entrusted property or document of title delivered to a lawyer as security for the payment of a fee or other obligation to the lawyer shall be held in trust in accordance with this Rule 1.15 and shall be clearly identified as property held as security and not as a completed transfer of beneficial ownership to the lawyer. This provision does not apply to property received by a lawyer on account of fees or other amounts owed to the lawyer at the time of receipt; however, such transfers are subject to the rules governing legal fees or business transactions between a lawyer and client.

(p) Duty to Report Misappropriation. A lawyer who discovers or reasonably believes that entrusted property has been misappropriated or misapplied shall promptly inform the Trust Account Compliance Counsel (TACC) in the North Carolina State Bar Office of Counsel. Discovery of intentional theft or fraud must be reported to the TACC immediately. When an accounting or bank error results in an unintentional and inadvertent use of one client's trust funds to pay the obligations of another client, the event must be reported unless the misapplication is discovered and rectified on or before the next quarterly reconciliation required by Rule 1.15-3(d)(1). This rule requires disclosure of information otherwise protected by Rule 1.6 if necessary to report the misappropriation or misapplication.

(q) Interest on Deposited Funds. Under no circumstances shall the lawyer be entitled to any interest earned on funds deposited in a trust account or fiduciary account. Except as authorized by Rule 1316 of subchapter 1D of the Rules and Regulations of the North Carolina State Bar, any interest earned on a trust account or fiduciary account, less any amounts deducted for bank service charges and taxes, shall belong to the client or other person or entity entitled to the corresponding principal amount.

(r) Abandoned Property. If entrusted property is unclaimed, the lawyer shall make due inquiry of his or her personnel, records and other sources of information in an effort to determine the identity and location of the owner of the property. If that effort is successful, the entrusted property shall be promptly transferred to the person or entity to whom it belongs. If the effort is unsuccessful and the provisions of G.S. 116B-53 are satisfied, the property shall be deemed abandoned, and the lawyer shall comply with the requirements of Chapter 116B of the General Statutes concerning the escheat of abandoned property.

(s) Signature on Trust Checks.

(1) Checks drawn on a trust account must be signed by a lawyer, or by an employee who is not responsible for performing monthly or quarterly reconciliations and who is supervised by a lawyer. Prior to exercising signature authority, a lawyer or supervised employee shall take a one-hour trust account management continuing legal education (CLE) course approved by the State Bar for this purpose. The CLE course must be taken at least once for every law firm at which the lawyer or the supervised employee is given signature authority.

(2) Trust account checks may not be signed using signature stamps, preprinted signature lines on checks, or electronic signatures.

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CLIENT-LAWYER RELATIONSHIP

Search Rules

RULE 1.15-3 RECORDS AND ACCOUNTINGS

(a) **Check Format.** All general trust accounts, dedicated trust accounts, and fiduciary accounts must use business-size checks that contain an Auxiliary On-Us field in the MICR line of the check.

(b) **Minimum Records for Accounts at Banks.** The minimum records required for general trust accounts, dedicated trust accounts, and fiduciary accounts maintained at a bank shall consist of the following:

(1) all records listing the source and date of receipt of any funds deposited in the account including, but **not** limited to, bank receipts, deposit slips and wire and electronic transfer confirmations, and, in the case of a general trust account, all records also listing the name of the client or other person to whom the funds **belong**;

(2) all canceled checks or other items drawn on the account, or digital images thereof furnished by the bank, showing the amount, date, and recipient of the disbursement, and, in the case of a general trust account, the client name, file number, or other identifying information of the client from whose balance each item is drawn, provided, that:

(A) digital images must be legible reproductions of the front and back of the original items with no more than six images per page and no images smaller than 1-3/16 x 3 inches; and

(B) the bank must maintain, for at least six years, the capacity to reproduce electronically additional or enlarged images of the original items or records related thereto upon request within a reasonable time.

(3) all instructions or authorizations to transfer, disburse, or withdraw funds from the trust account (including electronic transfers or debits), or a written or electronic record of any such transfer, disbursement, or withdrawal showing the amount, date, and recipient of the transfer or disbursement, and, in the case of a general trust account, also showing the name of the client or other person to whom the funds **belong**;

(4) all bank statements and other documents received from the bank with respect to the trust account, including, but **not** limited to notices of return or dishonor of any item drawn on the account against insufficient funds;

(5) in the case of a general trust account, a ledger containing a record of receipts and disbursements for each person or entity from whom and for whom funds are received and showing the current balance of funds held in the trust account for each such person or entity; and

(6) any other records required by law to be maintained for the trust account.

(c) **Minimum Records for Accounts at Other Financial Institutions.** The minimum records required for dedicated trust accounts and fiduciary accounts at financial institutions other than a bank shall consist of the following:

(1) all records listing the source and date of receipt of all funds deposited in the account including, but **not** limited to, depository receipts, deposit slips, and wire and electronic transfer confirmations;

(2) a copy of all checks or other items drawn on the account, or digital images thereof furnished by the depository, showing the amount, date, and recipient of the disbursement, provided, that the images satisfy the requirements set forth in Rule 1.15-3(b)(2);

(3) all instructions or authorizations to transfer, disburse, or withdraw funds from the account (including electronic transfers or debits) or a written or electronic record of any such transfer, disbursement, or withdrawal showing the amount, date, and recipient of the transfer or disbursement;

(4) all statements and other documents received from the depository with respect to the account, including, but **not** limited to notices of return or dishonor of any item drawn on the account for insufficient funds; and

(5) any other records required by law to be maintained for the account.

(d) **Reconciliations of General Trust Accounts.**

(1) **Quarterly Reconciliations.** For each general trust account, a reconciliation report shall be prepared at least quarterly. Each reconciliation report shall show all of the following balances and verify that they are identical:

(A) The balance that appears in the general ledger as of the reporting date;

(B) The total of all subsidiary ledger balances in the general trust account, determined by listing and totaling the positive balances in the individual client ledgers and the administrative ledger maintained for servicing the account, as of the reporting date; and

(C) The adjusted bank balance, determined by adding outstanding deposits and other credits to the ending balance in the monthly bank statement and subtracting outstanding checks and other deductions from the balance in the monthly statement.

(2) **Monthly Reconciliations.** Each month, the balance of the trust account as shown on the lawyer's records shall be reconciled with the current bank statement balance for the trust account.

(3) The lawyer shall review, sign, date, and retain a copy of the reconciliations of the general trust account for a period of six years in accordance with Rule 1.15-3(g).

(e) **Accountings for Trust Funds.** The lawyer shall render to the client a written accounting of the receipts and disbursements of all trust funds (i) upon the complete disbursement of the trust funds, (ii) at such other times as may be reasonably requested by the client, and (iii) at least annually if the funds are retained for a period of more than one year.

(f) **Accountings for Fiduciary Property.** Inventories and accountings of fiduciary funds and other entrusted property received in connection with professional fiduciary services shall be rendered to judicial officials or other persons as required by law. If an annual or more frequent accounting is not required by law, a written accounting of all transactions concerning the fiduciary funds and other entrusted property shall be rendered to the beneficial owners, or their representatives, at least annually and upon the termination of the lawyer's professional fiduciary services.

(g) **Minimum Record Keeping Period.** A lawyer shall maintain, in accordance with this Rule 1.15, complete and accurate records of all entrusted property received by the lawyer, which records shall be maintained for at least the six (6) year period immediately preceding the lawyer's most recent fiscal year end.

(h) **Audit by State Bar.** The financial records required by this Rule 1.15 shall be subject to audit for cause and to random audit by the North Carolina State Bar; and such records shall be produced for inspection and copying in North Carolina upon request by the State Bar.

(i) **Reviews.**

(1) Each month, for each general trust account, dedicated trust account, and fiduciary account, the lawyer shall review the bank statement and cancelled checks for the month covered by the bank statement.

(2) Each quarter, for each general trust account, dedicated trust account, and fiduciary account, the lawyer shall review the statement of costs and receipts, client ledger, and cancelled checks of a random sample of representative transactions completed during the quarter to verify that the disbursements were properly made. The transactions reviewed must involve multiple disbursements unless no such transactions are processed through the account, in which case a single disbursement is considered a transaction for the purpose of this paragraph. A sample of three representative transactions shall satisfy this requirement, but a larger sample may be advisable.

(3) The lawyer shall take the necessary steps to investigate, identify, and resolve within ten days any discrepancies discovered during the monthly and quarterly reviews.

(4) A report of each monthly and quarterly review, including a description of the review, the transactions sampled, and any remedial action taken, shall be prepared. The lawyer shall sign, date, and retain a copy of the report and associated documentation for a period of six years in accordance with Rule 1.15-3(g).

(j) **Retention of Records in Electronic Format.** Records required by Rule 1.15-3 may be created, updated, and maintained electronically, provided:

(1) the records otherwise comply with Rule 1.15-3, to wit: electronically created reconciliations and reviews that are not printed must be reviewed by the lawyer and electronically signed using a "digital signature" as defined in 21 CFR 11.3(b)(5);

(2) printed and electronic copies of the records in industry-standard formats can be made on demand; and

(3) the records are regularly backed up by an appropriate storage device.

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CLIENT-LAWYER RELATIONSHIP

Search Rules

RULE 1.15-4 ALTERNATIVE TRUST ACCOUNT MANAGEMENT PROCEDURE FOR MULTI-MEMBER FIRM

(a) Trust Account Oversight Officer (TAOO).

Lawyers in a law firm of two or more lawyers may designate a partner in the firm to serve as the trust account oversight officer (TAOO) for any general trust account into which more than one firm lawyer deposits trust funds. The TAOO and the partners of the firm, or those with comparable managerial authority (managing lawyers), shall agree in writing that the TAOO will oversee the administration of any such trust account in conformity with the requirements of Rule 1.15, including, specifically, the requirements of this Rule 1.15-4. More than one partner may be designated as a TAOO for a law firm.

(b) Limitations on Delegation.

Designation of a TAOO does not relieve any lawyer in the law firm of responsibility for the following:

- (1) oversight of the administration of any dedicated trust account or fiduciary account that is associated with a legal matter for which the lawyer is primary legal counsel or with the lawyer's performance of professional fiduciary services; and
- (2) review of the disbursement sheets or statements of costs and receipts, client ledgers, and trust account balances for those legal matters for which the lawyer is primary legal counsel.

(c) Training of the TAOO.

- (1) Within the six months prior to beginning service as a TAOO, a lawyer shall,
 - (A) read all subparts and comments to Rule 1.15, all formal ethics opinions of the North Carolina State Bar interpreting Rule 1.15, and the North Carolina State Bar *Trust Account Handbook*;
 - (B) complete one hour of accredited continuing legal education (CLE) on trust account management approved by the State Bar for the purpose of training a lawyer to serve as a TAOO;
 - (C) complete two hours of training (live, online, or self-guided) presented by a qualified educational provider on one or more of the following topics: (i) financial fraud, (ii) safeguarding funds from embezzlement, (iii) risk assessment and management for bank accounts, (iv) information security and online banking, or (v) accounting basics; and
 - (D) become familiar with the law firm's accounting system for trust accounts.
- (2) During each year of service as a TAOO, the designated lawyer shall attend one hour of accredited continuing legal education (CLE) on trust account management approved by the State Bar for the purpose of training a TAOO or one hour of training, presented by a qualified educational provider, on one or more of the subjects listed in paragraph (c)(1)(C).

(d) Designation and Annual Certification.

The written agreement designating a lawyer as the TAOO described in paragraph (a) shall contain the following:

- (1) A statement by the TAOO that the TAOO agrees to oversee the operation of the firm's general trust accounts in compliance with the requirements of all subparts of Rule 1.15, specifically including the mandatory oversight measures in paragraph (e) of this rule;
- (2) Identification of the trust accounts that the TAOO will oversee;
- (3) An acknowledgement that the TAOO has completed the training described in paragraph (c)(1) and a description of that training;
- (4) A statement certifying that the TAOO understands the law firm's accounting system for trust accounts; and
- (5) An acknowledgement that the lawyers in the firm remain professionally responsible for the operation of the firm's trust accounts in compliance with Rule 1.15.

Each year on the anniversary of the execution of the agreement, the TAOO and the managing lawyers shall execute a statement confirming the continuing designation of the lawyer as the TAOO, certifying compliance with the requirements of this rule, describing the training undertaken by the TAOO as required by paragraph (c)(2), and reciting the statements required by subparagraphs (d)(1), (2),

(4), and (5). During the lawyer's tenure as TAOO and for six years thereafter, the agreement and all subsequent annual statements shall be maintained with the trust account records (*see* Rule 1.15-3(g)).

(e) Mandatory Oversight Measures.

In addition to any other record keeping or accounting requirement set forth in Rule 1.15-2 and Rule 1.15-3, the firm shall adopt a written policy detailing the firm's trust account management procedures which shall annually be reviewed, updated, and signed by the TAOO and the managing lawyers. Each version of the policy shall be retained for the minimum record keeping period set forth in Rule 1.15-3(g).

History Note: Statutory Authority G.S. 84-23

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Comments to Rule 1.15 and All Subparts

[1] The purpose of a lawyer's trust account or fiduciary account is to segregate the funds belonging to others from those belonging to the lawyer. Money received by a lawyer while providing legal services or otherwise serving as a fiduciary should never be used for personal purposes. Failure to place the funds of others in a trust or fiduciary account can subject the funds to claims of the lawyer's creditors or place the funds in the lawyer's estate in the event of the lawyer's death or disability.

Property Subject to these Rules

[2] Any property belonging to a client or other person or entity that is received by or placed under the control of a lawyer in connection with the lawyer's furnishing of legal services or professional fiduciary services must be handled and maintained in accordance with this Rule 1.15. The minimum records to be maintained for accounts in banks differ from the minimum records to be maintained for accounts in other financial institutions (where permitted), to accommodate brokerage accounts and other accounts with differing reporting practices.

Client Property

[3] Every lawyer who receives funds belonging to a client must maintain a trust account. The general rule is that every receipt of money from a client or for a client, which will be used or delivered on the client's behalf, is held in trust and should be placed in the trust account. All client money received by a lawyer, except that to which the lawyer is immediately entitled, must be deposited in a trust account, including funds for payment of future fees and expenses. Client funds must be promptly deposited into the trust account. Client funds must be deposited in a general trust account if there is no duty to invest on behalf of the client. Generally speaking, if a reasonably prudent person would conclude that the funds in question, either because they are nominal in amount or are to be held for a short time, could probably not earn sufficient interest to justify the cost of investing, the funds should be deposited in the general trust account. In determining whether there is a duty to invest, a lawyer shall exercise his or her professional judgment in good faith and shall consider the following:

- a) The amount of the funds to be deposited;
- b) The expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;
- c) The rates of interest or yield at financial institutions where the funds are to be deposited;
- d) The cost of establishing and administering dedicated accounts for the client's benefit, including the service charges, the costs of the lawyer's services, and the costs of preparing any tax reports required for income accruing to the client's benefit;
- e) The capability of financial institutions, lawyers, or law firms to calculate and pay income to individual clients;
- f) Any other circumstances that affect the ability of the client's funds to earn a net return for the client.

When regularly reviewing the trust accounts, the lawyer shall determine whether changed circumstances require further action with respect to the funds of any client. The determination of whether a client's funds are nominal or short-term shall rest in the sound judgment of the lawyer or law firm. No lawyer shall be charged with an ethical impropriety or breach of professional conduct based on the good faith exercise of such judgment

[4] A law firm with offices in another state may send a North Carolina client's funds to a firm office in another state for centralized processing provided, however, the funds are promptly deposited into a trust account with a bank that has branch offices in North Carolina, and further provided, the funds are transported and held in a safe place until deposited into the trust account. If this procedure is followed, client consent to the transfer of the funds to an out-of-state office of the firm is not required. However, all such client funds are subject to the requirements of these rules. Funds delivered to the lawyer by the client for payment of future fees or expenses should never be used by the lawyer for personal purposes or subjected to the potential claims of the lawyer's creditors.

[5] This rule does not prohibit a lawyer who receives an instrument belonging wholly to a client or a third party from delivering the instrument to the appropriate recipient without first depositing the instrument in the lawyer's trust account.

Property from Professional Fiduciary Service

[6] The phrase "professional fiduciary service," as used in this rule, is service by a lawyer in any one of the various fiduciary roles undertaken by a lawyer that is not, of itself, the practice of law, but is frequently undertaken in conjunction with the practice of law. This includes service as a trustee, guardian, personal representative of an estate, attorney-in-fact, and escrow agent, as well as service in other fiduciary roles "customary to the practice of law."

[7] Property held by a lawyer performing a professional fiduciary service must also be segregated from the lawyer's personal property, properly labeled, and maintained in accordance with the applicable provisions of this rule.

[8] When property is entrusted to a lawyer in connection with a lawyer's representation of a client, this rule applies whether or not the lawyer is compensated for the representation. However, the rule does not apply to property received in connection with a lawyer's uncompensated service as a fiduciary such as a trustee or personal representative of an estate. (Of course, the lawyer's conduct may be governed by the law applicable to fiduciary obligations in general, including a fiduciary's obligation to keep the principal's funds or property separate from the fiduciary's personal funds or property, to avoid self-dealing, and to account for the funds or property accurately and promptly).

[9] Compensation distinguishes professional fiduciary service from a fiduciary role that a lawyer undertakes as a family responsibility, as a courtesy to friends, or for charitable, religious or civic purposes. As used in this rule, "compensated services" means services for which the lawyer obtains or expects to obtain money or any other valuable consideration. The term does not refer to or include reimbursement for actual out-of-pocket expenses.

Property Excluded from Coverage of Rules

[10] This rule also does not apply when a lawyer is handling money for a business or for a religious, civic, or charitable organization as an officer, employee, or other official regardless of whether the lawyer is compensated for this service. Handling funds while serving in one of these roles does not constitute "professional fiduciary service," and such service is not "customary to the practice of law."

Burden of Proof

[11] When a lawyer is entrusted with property belonging to others and does not comply with these rules, the burden of proof is on the lawyer to establish the capacity in which the lawyer holds the funds and to demonstrate why these rules should not apply.

Prepaid Legal Fees

[12] Whether a fee that is prepaid by the client should be placed in the trust account depends upon the fee arrangement with the client. A retainer fee in its truest sense is a payment by the client for the reservation of the exclusive services of the lawyer, which is not used to pay for the legal services provided by the lawyer and, by agreement of the parties, is nonrefundable upon discharge of the lawyer. It is a payment to which the lawyer is immediately entitled and, therefore, should not be placed in the trust account. A "retainer," which is actually a deposit by the client of an advance payment of a fee to be billed on an hourly or some other basis, is not a payment to which the lawyer is immediately entitled. This is really a security deposit and should be placed in the trust account. As the lawyer earns the fee or bills against the deposit, the funds should be withdrawn from the account. Rule 1.16(d) requires the refund to the client of any part of a fee that is not earned by the lawyer at the time that the representation is terminated.

Abandoned Property

[13] Should a lawyer need technical assistance concerning the escheat of property to the State of North Carolina, the lawyer should contact the escheat officer at the Office of the North Carolina State Treasurer in Raleigh, North Carolina.

Disputed Funds

[14] A lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as the State Bar's program for fee dispute resolution. See Rule 1.5(f). The undisputed portion of the funds shall be promptly distributed.

[15] Third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claim is resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

Responsibility for Records and Accountings

[16] It is the lawyer's responsibility to assure that complete and accurate records of the receipt and disbursement of entrusted property are maintained in accordance with this rule. The required record retention period of six years set forth in this rule does not preclude the State Bar from seeking records for a period prior to the retention period and, if obtained, from pursuing a disciplinary action based thereon if such action is not prohibited by law or other rules of the State Bar.

[17] The rules permit the retention of records in electronic form. A storage device is appropriate for backing up electronic records if it reasonably assures that the records will be recoverable despite the failure or destruction of the original storage device on which the records are stored. For a discussion of storage methods not solely under the control of the lawyer, *see* 2011 FEO 6.

[18] Many businesses are now converting paper checks to automated clearinghouse (ACH) debits to decrease costs and increase operating efficiencies. When a check is converted, the check is taken either at the point-of-sale or through the mail for payment, the account information is captured from the check, and an electronic transaction is created for payment through the ACH system. The original physical check is typically destroyed by the converting entity (although an image of the check may be stored for a certain period of time). If a check drawn on a trust account is converted to ACH, the lawyer will not receive either the physical check or a check image. The transaction will appear on the lawyer's trust account statement as an ACH debit with limited information about the payment (e.g., dollar amount, date processed, originator of the ACH debit).

[19] To prevent conversion of a check to ACH without authorization, a lawyer is required to use checks with an "Auxiliary On-Us field." A check will not be eligible for conversion to ACH if it contains an Auxiliary On-Us field, which is an additional field that appears in the left-most position of the MICR (magnetic ink character recognition) line on a business size check. The lawyer should confirm with the lawyer's financial institution that the Auxiliary On-Us field is included on the lawyer's trust account checks. Including an Auxiliary On-Us field on the check will require using checks that are longer than six inches. As with the other information in the MICR line of a check, the routing, account and payment numbers, the financial institution issuing the check determines the content of the Auxiliary On-Us field.

[20] Authorized ACH debits that are electronic transfers of funds (in which no checks are involved) are allowed provided the lawyer maintains a record of the transaction as required by Rule 1.15-3(b)(3) and (c)(3). The record, whether consisting of the instructions or authorization to debit the account, a record or receipt from the register of deeds or a financial institution, or the lawyer's independent record of the transaction, must show the amount, date, and recipient of the transfer or disbursement, and, in the case of a general trust account, also show the name of the client or other person to whom the funds belong.

[21] The lawyer is responsible for keeping a client, or any other person to whom the lawyer is accountable, advised of the status of entrusted property held by the lawyer. In addition, the lawyer must take steps to discover any unauthorized transactions involving trust funds as soon as possible. Therefore, it is essential that the lawyer regularly reconcile a general trust account. This means that, at least once a month, the lawyer must reconcile the current bank statement balance with the balance shown for the entire account in the lawyer's records, such as a check register or its equivalent, as of the date of the bank statement. At least once a quarter, the lawyer must reconcile the individual client balances shown on the lawyer's ledger with the current bank statement balance. Monthly reconciliation will help to uncover unauthorized ACH transactions promptly. The current bank balance is the balance obtained when subtracting outstanding checks and other withdrawals from the bank statement balance and adding outstanding deposits to the bank statement balance. With regard to trust funds held in any trust account, there is also an affirmative duty to produce a written accounting for the client and to deliver it to the client, either at the conclusion of the transaction or periodically if funds are held for an appreciable period. Such accountings must be made at least annually or at more frequent intervals if reasonably requested by the client.

Bank Notice of Overdrafts

[22] A properly maintained trust account should not have any items presented against insufficient funds. However, even the best-maintained accounts are subject to inadvertent errors by the bank or the lawyer, which may be easily explained. The reporting requirement should not be burdensome and may help avoid a more serious problem.

Fraud Prevention Measures

[23] The mandatory monthly and quarterly reviews and oversight measures in Rule 1.15-3(i) facilitate early detection of internal theft and early detection and correction of errors. They are minimum fraud prevention measures necessary for the protection of funds on deposit in a firm trust or fiduciary account from theft by any person with access to the account. Internal theft from trust accounts by insiders at a law firm can only be timely detected if the records of the firm's trust accounts are routinely reviewed. For this reason, Rule 1.15-3(i)(1) requires monthly reviews of the bank statements and cancelled checks for all general, dedicated, and fiduciary accounts. In addition, Rule 1.15-3(i)(2) requires quarterly reviews of a random sample of three transactions for each trust account, dedicated trust account, and fiduciary account including examination of the statement of costs and receipts, client ledger, and cancelled checks for the transactions. Review of these documents will enable the lawyer to verify that the disbursements were made properly. Although not required by the rule, a larger sample than three transactions is advisable to increase the likelihood that internal theft will be detected.

[24] Another internal control to prevent fraud is found in Rule 1.15-2(s) which addresses the signature authority for trust account checks. The provision prohibits an employee who is responsible for performing the monthly or quarterly reconciliations for a trust account from being a signatory on a check for that account. Dividing the check signing and reconciliation responsibilities makes it more difficult for one employee to hide fraudulent transactions. Similarly, signature stamps, preprinted signature lines on checks, and electronic signatures are prohibited to prevent their use for fraudulent purposes.

[25] In addition to the recommendations in the North Carolina State Bar Trust Account Handbook (see the chapter on Safeguarding Funds from Embezzlement), the following fraud prevention measures are recommended:

- (1) Enrolling the trust account in an automated fraud detection program;
- (2) Implementation of security measures to prevent fraudulent wire transfers of funds;
- (3) Actively maintaining end-user security at the law firm through safety practices such as strong password policies and procedures, the use of encryption and security software, and periodic consultation with an information technology security professional to advise firm employees; and
- (4) Insuring that all staff members who assist with the management of the trust account receive training on and abide by the security measures adopted by the firm.

Lawyers should frequently evaluate whether additional fraud control measures are necessary and appropriate.

Duty to Report Misappropriation or Misapplication

[26] A lawyer is required by Rule 1.15-2(p) to report to the Trust Account Compliance Counsel of the North Carolina State Bar Office of Counsel if the lawyer knows or reasonably believes that entrusted property, including trust funds, has been misappropriated or misapplied. The rule requires the reporting of an unintentional misapplication of trust funds, such as the inadvertent use of one client's funds on deposit in a general trust account to pay the obligations of another client, unless the lawyer discovers and rectifies the error on or before the next scheduled quarterly reconciliation. A lawyer is required to report the conduct of lawyers and non-lawyers as well as the lawyer's own conduct. A report is required regardless of whether information leading to the discovery of the misappropriation or misapplication would otherwise be protected by Rule 1.6. If disclosure of confidential client information is necessary to comply with this rule, the lawyer's disclosure should be limited to the information that is necessary to enable the State Bar to investigate. *See* Rule 1.6, cmt. [15].

Designation of a Trust Account Oversight Officer

[27] In a firm with two or more lawyers, personal oversight of all of the activities in the general trust accounts by all of the lawyers in the firm is often impractical. Nevertheless, any lawyer in the firm who deposits into a general trust account funds entrusted to the lawyer by or on behalf of a client is professionally responsible for the administration of the trust account in compliance with Rule 1.15 regardless of whether the lawyer directly participates in the administration of the trust account. Moreover, Rule 5.1 requires all lawyers with managerial or supervisory authority over the other lawyers in a firm to make reasonable efforts to ensure that the other lawyers conform to the Rules of Professional Conduct. Rule 1.15-4 provides a procedure for delegation of the oversight of the routine administration of a general trust account to a firm partner, shareholder, or member (*see* Rule 1.0(h)) in a manner that is professionally responsible. By identifying, training, and documenting the appointment of a trust account oversight officer (TAOO) for the law firm, the lawyers in a multiple-lawyer firm may responsibly delegate the routine administration of the firm's general trust accounts to a qualified lawyer. Delegation consistent with the requirements of Rule 1.15-4 is evidence of a lawyer's good faith effort to comply with Rule 5.1.

[28] Nevertheless, designation of a TAOO does not insulate from professional discipline a lawyer who personally engaged in dishonest or fraudulent conduct. Moreover, a lawyer having actual or constructive knowledge of dishonest or fraudulent conduct or the mismanagement of a trust account in violation of the Rules of Professional Conduct by any firm lawyer or employee remains subject to professional discipline if the lawyer fails to promptly take reasonable remedial action to avoid the consequences of such conduct including reporting the conduct as required by Rule 1.15-2(p) or Rule 8.3. *See also* Rule 5.1 and Rule 5.3.

Limitations on Delegation to TAOO

[29] Despite the designation of a TAOO pursuant to Rule 1.15-4, each lawyer in the firm remains professionally responsible for the trust account activity associated with the legal matters for which the lawyer provides representation. Therefore, for each legal matter for which the lawyer is primary counsel, the lawyer must review and approve any disbursement sheet or settlement statement, trust account entry in the client ledger, and trust account balance associated with the matter. Similarly, a lawyer who establishes a dedicated trust account or fiduciary account in connection with the representation of a client is professionally responsible for the administration of the dedicated trust account or fiduciary account in compliance with Rule 1.15.

Training for Service as a TAOO

[30] A qualified provider of the educational training programs for a TAOO described in Rule 1.15-4(c)(1)(C) need not be an accredited sponsor of continuing legal education programs (see 27 NCAC 1D, Rule .1520), but must be knowledgeable and reputable in the specific field and must offer educational materials as part of its usual course of business. Training may be completed via live presentations, online courses, or self-guided study. Self-guided study may consist of reading articles, presentation materials, or websites that have been created for the purpose of education in the areas of financial fraud, safeguarding funds from embezzlement, risk management for bank accounts, information security and on-line banking, or basic accounting.

History Note: Statutory Authority G.S. 84-23

Amended March 1, 2003; March 6, 2008; June 9, 2016

Ethics Opinion Notes

CPR 358 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/cpr-358/>).

RPC 4 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-4/>). Opinion rules that money belonging to an incarcerated client may be handled by the Public Defender as a favor and must be deposited into a trust account.

RPC 37 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-37/>). Opinion rules that a law firm which has received money representing the refund of an appeal bond to a client owing substantial fees to the firm may apply the appeal bond refund to the fees if an agreement with the client would authorize the firm to do so.

RPC 44 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-44/>). Opinion rules that a closing attorney must follow the lender's closing instruction that closing documents be recorded prior to disbursement.

RPC 47 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-47/>). Opinion rules that an attorney who receives from his or her client a small sum of money which is to be used to pay the cost of recording a deed must deposit that money in a trust account.

RPC 48 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-48/>). Opinion outlines professional responsibilities of lawyers involved in a law firm dissolution.

RPC 51 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-51/>). Opinion rules that where a lawyer receives a lump sum payment in advance which is inclusive of the costs of litigation, the portion representing the costs must be deposited in the trust account.

RPC 66 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-66/>). Opinion rules that an attorney serving as an escrow agent may not disburse in a manner not contemplated by the escrow agreement unless all parties agree.

RPC 69 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-69/>). Opinion rules that a lawyer must obey the client's instruction not to pay medical providers from the proceeds of settlement in the absence of a valid physician's lien.

RPC 75 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-75/>). Opinion rules that a lawyer may not pay his or her fee or the fee of a physician from funds held in trust for a client without the client's authority.

RPC 78 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-78/>). Opinion rules that a closing attorney cannot make conditional delivery of trust account checks to real estate agent before depositing loan proceeds against which checks were to be drawn.

RPC 86 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-86/>). Opinion discusses disbursement against uncollected funds, accounting for earnest money paid outside closing and representation of the seller.

RPC 89 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-89/>). Opinion rules that trust funds must be held at least five years after the last occurrence of certain prescribed events before they may be deemed abandoned.

RPC 96 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-96/>). Opinion rules that attorneys practicing in North Carolina who are affiliated with an interstate law firm may not permit trust funds belonging to their clients to be deposited in a trust account maintained outside North Carolina without written consent.

RPC 125 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-125/>). Opinion rules that a lawyer may not pay a medical care provider from the proceeds of a settlement negotiated prior to the filing of suit over his client's objection unless the funds are subject to a valid lien.

RPC 149 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-149/>). Opinion rules that an attorney may not donate a client's funds to a charity without the client's consent.

RPC 150 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-150/>). Opinion rules that an attorney cannot permit the bank to link her trust and business accounts for the purpose of determining interest earned or charges assessed if such an arrangement causes the attorney to use client funds from the trust account to offset service charges assessed on the business account.

RPC 158 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-158/>). Opinion rules that a sum of money paid to a lawyer in advance to secure payment of a fee which is yet to be earned and to which the lawyer is not entitled must be deposited in the lawyer's trust account.

RPC 191 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-191/>). Opinion rules that a lawyer may make disbursements from his or her trust account in reliance upon the deposit of funds provisionally credited to the account if the funds are deposited in the form of cash, wired funds, or by specified instruments which, although they are not irrevocably credited to the account upon deposit, are generally regarded as reliable.

RPC 209 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-209/>). Opinion provides guidelines for the disposal of closed client files.

RPC 226 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-226/>). Opinion rules that when a law firm receives funds that are not identified as client funds, the firm must investigate the ownership of the funds and, if it is reasonable to conclude the funds do not belong to a client or a third party, the firm may conclude that the funds belong to the firm.

RPC 234 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-234/>). Opinion rules that an inactive client file may be stored in an electronic format provided original documents with legal significance are preserved and the documents in the electronic file can be reproduced on paper.

RPC 247 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-247/>). Opinion provides guidelines for receipt of payment of earned and unearned fees by electronic transfers.

97 Formal Ethics Opinion 4 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/97-formal-ethics-opinion-4/>). Opinion provides that flat fees may be collected at the beginning of a representation, treated as presently owed to the lawyer, and deposited into the lawyer's general operating account or paid to the lawyer but that if a collected fee is clearly excessive under the circumstances of the representation, a refund to the client of some or all of the fee is required.

97 Formal Ethics Opinion 9 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/97-formal-ethics-opinion-9/>). Opinion rules that, provided steps are taken to safeguard the client funds on deposit in a trust account, a lawyer may accept fees paid by credit card although the bank's agreement to process such charges authorizes the bank to debit the lawyer's trust account in the event a credit card charge is disputed by a client.

98 Formal Ethics Opinion 11 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/98-formal-ethics-opinion-11/>). Opinion rules that the fiduciary relationship that arises when a lawyer serves as an escrow agent demands that the lawyer be impartial to both the obligor and the obligee and, therefore, the lawyer may not act as advocate for either party against the other. Once the fiduciary duties of the escrow agent terminate, the lawyer may take a position adverse to the obligor or the obligee provided the lawyer is not otherwise disqualified.

98 Formal Ethics Opinion 14 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/98-formal-ethics-opinion-14/>). Opinion rules that a lawyer may participate in the solicitation of funds from third parties to pay the legal fees of a client provided there is disclosure to contributors and the funds are administered honestly.

98 Formal Ethics Opinion 15 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/98-formal-ethics-opinion-15/>). Opinion rules that whether the year 2000 computer problem is being adequately addressed by a depository bank should be considered when selecting a depository bank for a trust account.

2000 Formal Ethics Opinion 4 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2000-formal-ethics-opinion-4/>). Opinion rules that a lawyer may sign a statement acknowledging a finance company's interest in a client's recovery subject to certain conditions.

2001 Formal Ethics Opinion 3 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2001-formal-ethics-opinion-3/>). Opinion rules that a lawyer may settle a tort claim by making disbursements from a trust account in reliance upon the deposit of funds provisionally credited to the account if the deposited funds are in the form of a financial instrument that is specified in the Good Funds Settlement Act, G.S. Chap. 45A.

2001 Formal Ethics Opinion 11 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2001-formal-ethics-opinion-11/>). Opinion rules that when a client authorizes a lawyer to assure a medical provider that it will be paid upon the settlement of a personal injury claim, the lawyer may subsequently withhold settlement proceeds from the client and maintain the funds in her trust account, although there is no medical lien against the funds, until a dispute between the client and the medical provider over the disbursement of the funds is resolved.

2001 Formal Ethics Opinion 14 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2001-formal-ethics-opinion-14/>). Opinion rules that retaining a CD-ROM with digital images of trust account checks that is provided by the depository bank satisfies record-keeping requirements for trust accounts.

2005 Formal Ethics Opinion 11 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2005-formal-ethics-opinion-11/>). Opinion examines the requirements for an interim account used to pay the costs for real estate closings and also rules that the actual costs may be marked up by the lawyer provided there is full disclosure and the overcharges are not clearly excessive.

2005 Formal Ethics Opinion 13 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2005-formal-ethics-opinion-13/>). Opinion rules that a minimum fee that will be billed against at an hourly rate and is collected at the beginning of representation belongs to the client and must be deposited into the trust account until earned and, upon termination of representation, the unearned portion of the fee must be returned to the client.

2006 Formal Ethics Opinion 8 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2006-formal-ethics-opinion-8/>). Opinion rules that a lawyer may disburse against deposited items in reliance upon a bank's funding schedule under certain circumstances.

2006 Formal Ethics Opinion 15 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2006-formal-ethics-opinion-15/>). Opinion rules that a lawyer may charge a reasonable dormancy fee against unclaimed funds if the client agrees in advance and the fee meets other statutory requirements.

2006 Formal Ethics Opinion 16 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2006-formal-ethics-opinion-16/>). Opinion rules that under certain circumstances a lawyer may consider a dispute with a client over legal fees resolved and transfer funds from the trust account to his operating account to pay those fees.

2008 Formal Ethics Opinion 10 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2008-formal-ethics-opinion-10/>). Opinion surveys prior ethics opinions on legal fees, sets forth the ethical requirements for the different types of fees paid in advance, authorizes minimum fees earned upon payment, and provides model fee provisions.

2008 Formal Ethics Opinion 13 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2008-formal-ethics-opinion-13/>). Opinion rules that, unless affected clients expressly consent to the disclosure of their confidential information, a lawyer may allow a title insurer to audit the lawyer's real estate trust account and reconciliation reports only if certain written assurances to protect client confidences are obtained from the title insurer, the audited account is only used for real estate closings, and the audit is limited to certain records and to real estate transactions insured by the title insurer.

2009 Formal Ethics Opinion 4 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2009-formal-ethics-opinion-4/>). Opinion rules that a law firm may establish a credit card account that avoids commingling by depositing unearned fees into the law firm's trust account and earned fees into the law firm's operating account provided the problem of chargebacks is addressed.

2010 Formal Ethics Opinion 4 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2010-formal-ethics-opinion-4/>). Opinion provides guidelines for participation in a barter exchange.

2011 Formal Ethics Opinion 6 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2011-formal-ethics-opinion-6/>). Opinion rules that a lawyer may contract with a vendor of software as a service provided the lawyer uses reasonable care to safeguard confidential client information.

2011 Formal Ethics Opinion 7 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2011-formal-ethics-opinion-7/>). Opinion rules that a law firm may use online banking to manage its trust accounts provided the firm's managing lawyers are regularly educated on the security risks and actively maintain end-user security.

2011 Formal Ethics Opinion 10 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2011-formal-ethics-opinion-10/>). Opinion rules that a lawyer may advertise on a website that offers daily discounts to consumers where the website company's compensation is a percentage of the amount paid to the lawyer if certain disclosures are made and certain conditions are satisfied.

2011 Formal Ethics Opinion 13 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2011-formal-ethics-opinion-13/>). Editor's note: This opinion is not intended to imply that a lawyer for an estate is required to petition the clerk for approval of the lawyer's fee, however, the personal representative's commission may be reduced if the Clerk of Court does not approve the lawyer's fee in advance.

Opinion rules that client funds or the funds of a third party that are placed in the lawyer's control for the purpose of being safeguarded, managed, or disbursed in connection with a transaction, but which were not designated or identified as funds for the payment of legal fees, may not be retained in the trust account, pursuant to Rule 1.15-2(g), as disputed funds to which the lawyer may be entitled.